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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,790	10/19/2005	Francesco Pessolano	NL030397US1	4003

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NXP, B.V.
NXP INTELLECTUAL PROPERTY & LICENSING
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE, CA 95131

EXAMINER	
KING, JOHN B	

ART UNIT	PAPER NUMBER
2435	

NOTIFICATION DATE	DELIVERY MODE
06/16/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/553,790	**Applicant(s)** PESSOLANO, FRANCESCO	
	Examiner John B. King	**Art Unit** 2435	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-8 and 10-14*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kimyen Vu/
Supervisory Patent Examiner, Art Unit 2435

/John B King/
Examiner, Art Unit 2435

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed June 1, 2010 have been considered but they are not fully persuasive. In the remarks applicant argues:
I) The 35 U.S.C. 112 rejection because "one of ordinary skill in the art would find the plain meaning of this limitation is clear."

II) The cited prior arts do not teach "each of the pairs of processing signals including an input signal and an output signal of one of the processing circuits".

III) The cited prior art does not teach "monitoring the logic level changes of the circuit".

IV) The cited prior arts "load circuit" is not the same as the claimed "current drawing circuit".

V) The combination of references.

In response to applicant's arguments:
I) Applicant is merely arguing that one of ordinary skill in the art would understand the meaning of the limitation without any further explanation or proof. Please see MPEP 2145 for further explanation. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

Furthermore, if one of ordinary skill in the art would understand the meaning of the limitation why has no explanation of the limitation been given or proof that one of ordinary skill in the art would recognize the plain meaning of the limitation? Without any further clarification of the claim or explanation of the meaning of the claim and why one of ordinary skill in the art would understand the plain meaning of the limitation, the examiner is still unclear about the meaning of the claim limitation and the 112 rejection is maintained.

II) The prior art rejection that was given was based on the 112 rejection and the fact that the claim was unclear. The examiner rejected the claims based on the interpretation that the limitation in question meant that the system was using a feedback loop. This was based on the background of the Instant Application that cited references that used a feedback loop system to accomplish the claimed invention. Therefore, the interpretation of the claim limitation of using a feedback loop system would have been an obvious interpretation given that the background discussed using a feedback loop system. Because the claim was unclear, the examiner gave the 112 rejection and had to use the best arts that were available based upon the 112 rejection and the best interpretation of the limitation.

III) Thuringer, col. 2 lines 47-60 and Figure 2, teaches a pair of AND gates that "monitor the logic level changes". When the input signals to either AND gate changes the output will also change depending on the inputs. Therefore, each AND gate is monitoring the logic level changes of the incoming signals. If the logic levels do not change the output will always be the same and if the logic levels do change the output will be based on the incoming signals. Applicant states that "there is no mention of a change in output of the first AND gate, nor of the second AND gate determining a transition in the logic level of AND gate 5." However, this is how AND gates work and is well-known in the art. When one of the inputs to an AND gate is changes (the logic level of the incoming signal changes) the output of the AND gate will also change depending on the other inputs to the AND gate.

IV) Thuringer, col. 1 lines 28-65, teaches having a load circuit that is connected to the power supply to draw extra power and mask the measureable power supply consumption especially during security-relevant operations. This is done by having the load circuit output a certain power based on the rest of the system so that the measurable power consumption is always constant in order to mask the power consumption during tasks that need to be secure. To the examiner this appears to be the same as the claimed limitation.

V) In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and KSR International Co. v. Teleflex, Inc., 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Thuringer teaches having the measurable power consumption always be constant to mask the power supply current, while Odinak has multiple circuits performing a similar operation to mask the secret information by having a random power supply current. If the arts were to be combined the result would be a system that incorporates more randomness (increased security) into the measurable output of the power supply. It would also have been obvious to have multiple circuits perform the same operation as a single circuit as long as the output is the same in both cases given the same input. It is well-known that circuitry can be combined or separated for multiple reasons such as cost and speed given that the result is still the same.

The examiner would also like to remind applicant that neither Robert J. Crawford or Juergen Krause-Polstorff are listed as attorneys of record for this application. Please fix this in the event that a determination of allowable subject matter can be decided at a later date.